

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF KEVIN DIXON § No. 601, 2006
FOR A WRIT OF MANDAMUS §

Submitted: December 22, 2006

Decided: January 19, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 19th day of January 2007, it appears to the Court that:

(1) The petitioner, Kevin Dixon, seeks to invoke this Court's original jurisdiction to issue an extraordinary writ of mandamus¹ to compel the Superior Court to provide him with copies of his court-ordered psychiatric/psychological evaluations so that he may pursue a postconviction motion on the ground of ineffective assistance of counsel. The State of Delaware has filed an answer requesting that Dixon's petition be dismissed.² We conclude that Dixon's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) According to the Superior Court docket sheet, Dixon was charged with Murder in the First Degree and a weapon offense in 1982. In

¹ Del. Const. art. IV, §11(6); Supr. Ct. R. 43.

² In the interest of justice, the Court also has considered Dixon's response to the State's answer and motion to dismiss, even though Dixon did not request leave to file a response. Supr. Ct. R. 43(b) (vii).

April 1983, Dixon's counsel filed a notice of intent to present an insanity defense at trial. In May 1983, his counsel filed a motion for a psychiatric/psychological examination, which the Superior Court granted in June 1983. On August 25, 1983, Dr. Irwin Weintraub examined Dixon at the New Castle County Superior Court cellblock.³ Four days later, Dixon entered a plea of guilty to Murder in the Second Degree. As part of the plea agreement, the State dismissed the weapon charge. In October 1983, Dixon was sentenced to life imprisonment.

(3) In January 1984, the Superior Court ordered, pursuant to Del. Code Ann. tit. 11, §406, that Dixon be transferred from prison to the Delaware State Hospital for "further evaluation and treatment of his mental illness for as long as determined to be medically necessary" by the medical staffs of the Department of Correction ("DOC") and the Delaware State Hospital.⁴ Sometime thereafter, Dixon was returned to prison.

(4) In February 1986, DOC informed the Superior Court that a psychologist and a psychiatrist had both examined Dixon and had determined that he was "presently mentally ill." The Superior Court ordered

³ Although the docket sheet does not explicitly so reflect, it appears that Dr. Weintraub found Dixon to be competent to stand trial.

⁴ Del. Code Ann. tit. 11, § 406 governs the procedures to be followed when an incarcerated prisoner requires treatment for mental illness.

Dixon to be transferred back to the Delaware State Hospital. Sometime thereafter, Dixon was transferred back to prison.

(5) In February 1999, the Superior Court ordered Dixon to be evaluated and treated at the Delaware State Hospital. A psychiatric/psychological evaluation was filed in the Superior Court and placed under seal. In September 1999, the Superior Court ordered Dixon to be returned to prison. In January 2002, the Superior Court again ordered Dixon to be evaluated at the Delaware State Hospital. That evaluation also was filed in the Superior Court and ordered sealed.

(6) In August 2002, after being transferred back to prison, Dixon wrote a letter to the Superior Court paralegal office. The staff responded to the letter by stating that “the Court will not consider correspondence that is abusive, offensive, or threatening.” The final entry on the Superior Court’s docket sheet is the filing of the present petition for a writ of mandamus in 2006.

(7) A writ of mandamus is an extraordinary remedy issued by this Court to compel a trial court to perform a duty.⁵ As a condition precedent to the issuance of the writ, Dixon must demonstrate that: he has a clear right to the performance of the duty; no other adequate remedy is available; and the

⁵ *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

trial court has arbitrarily failed or refused to perform its duty.⁶ Mandamus may not be invoked as a substitute for appellate review.⁷

(8) There is no basis for the issuance of a writ of mandamus in this case. Dixon has failed to demonstrate that the Superior Court has failed or refused to perform a duty owed to him. Moreover, Dixon, in essence, seeks mandamus as a substitute for appellate review of a properly filed postconviction motion pursuant to Rule 61.⁸

NOW, THEREFORE, IT IS ORDERED that Dixon's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁶ Id.

⁷ *Matushefske v. Herlihy*, 214 A.2d 883, 885 (Del. 1965).

⁸ In order to obtain copies of his evaluations for purposes of a postconviction motion pursuant to Rule 61, Dixon must first request them from the Superior Court as part of a Rule 61 proceeding.